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and PIXAR

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

JAKE MANDEVILLE-ANTHONY,  
an individual,

Plaintiff,

V.

THE WALT DISNEY COMPANY,  
WALT DISNEY PICTURES,  
DISNEY ENTERPRISES, INC.,  
PIXAR d/b/a PIXAR ANIMATION  
STUDIOS; and DOES 1-10, inclusive.

### Defendants.

Case No. CV 11-2137 VBF (JEMx)

Complaint Filed: March 14, 2011

**DEFENDANTS' OBJECTIONS TO  
AND REQUEST TO STRIKE  
HUNTER DECLARATION AND  
PORTIONS OF PLAINTIFF'S  
OPPOSITION BRIEF**

Date: August 1, 2011  
Time: 1:30 p.m.  
Location: Courtroom 9

## Hon. Valerie Baker Fairbank

1 Defendants The Walt Disney Company, Walt Disney Pictures, Disney  
2 Enterprises, Inc. and Pixar (“Defendants”) hereby object to and request to strike:  
3 (1) the declaration of Dr. Lewis Hunter (the “Hunter Declaration”) filed in support  
4 of plaintiff Jake Mandeville-Anthony’s Opposition to Defendants’ Motion for  
5 Judgment on the Pleadings; (2) all citations to, references to, and arguments that rely  
6 on the Hunter Declaration in Plaintiff’s Opposition; and (3) all pages of Plaintiff’s  
7 Opposition that exceed the page limits mandated by the Local Rules and this Court’s  
8 Standing Order. These objections are made on the grounds that the Hunter  
9 Declaration contains argument, opinions, and other “facts” that go far beyond the  
10 four corners of Plaintiff’s Complaint and, as a matter of law, are not properly before  
11 the Court in connection with Defendants’ FRCP 12(c) motion. Additionally,  
12 Plaintiff’s 36-page Opposition exceeds the 25-page limit under Central District  
13 Local Rule 11-6 and this Court’s Standing Order. Thus, pages 26 through 36 should  
14 also be stricken.

15 **I. THE COURT SHOULD STRIKE THE HUNTER DECLARATION IN ITS ENTIRETY**

16 The standard for deciding a Rule 12(c) motion for judgment on the pleadings  
17 is “functionally identical” to the standard of review for a Rule 12(b)(6) motion to  
18 dismiss for failure to state a claim. *Cafasso v. General Dynamics C4 Systems, Inc.*,  
19 637 F.3d 1047, 1055, n.4 (9th Cir. 2011). When ruling on such motions, a court  
20 may consider the allegations in the complaint, documents incorporated by reference  
21 into the complaint, and judicially noticeable materials. *Tellabs, Inc. v. Makor Issues*  
22 & *Rights, Ltd.*, 551 U.S. 308, 322-323 (2007); *Milne v. Slesinger, Inc.*, 2003 WL  
23 21076983, \*3 (C.D. Cal. May 8, 2003). The court may not take into account any  
24 other facts beyond the complaint that are presented in opposition to a Rule 12(b)(6)  
25 or Rule 12(c) motion. *Schneider v. California Dept. of Corrections*, 151 F.3d 1194,  
26 1197, fn.1 (9th Cir. 1998); *Williston Basin Interstate Pipeline Co. v. Exclusive Gas*  
27 *Storage Leasehold, et al.*, 524 F.3d 1090, 1096 (9th Cir. 2008). For this reason,  
28 district courts disregard and strike any declarations filed in opposition to such

1 motions. *See Bender v. LG Electronics U.S.A., Inc.*, No. CV 09-02114 JF (PVT),  
2 2010 WL 889541, \*6 (N.D. Cal. Mar. 11, 2010) (the Court “may not consider at this  
3 time declarations filed in opposition to a motion to dismiss”); *Heyer v. Governing*  
4 *Bd. of Mt. Diablo Unified Sch. Dist.*, No. C-10-4525 MMC, 2011 WL 724736, \*2  
5 fn.1 (N.D. Cal. Feb. 22, 2011) (same); *Jackson v. Cate*, No. CV 09-01326-PSG  
6 DTB, 2010 WL 4668311, \*1 (C.D. Cal. Oct. 7, 2010) (court granted motion to strike  
7 declaration filed in support of opposition to motion to dismiss); *Pistoresi v. Madera*  
8 *Irr. Dist.*, No. CV-F-08-843-LJO-DLB, 2009 WL 302067, \*3 (E.D. Cal. Feb. 6,  
9 2009) (court struck plaintiff’s declaration filed in opposition to Rule 12 motion);  
10 *Appling v. Wachovia Mortg., FSB*, 745 F. Supp. 2d 961, 968 (N.D. Cal. 2010)  
11 (excluding declaration from consideration in ruling on motion to dismiss).

12 Here, Plaintiff did exactly what the foregoing rules forbid: he submitted an  
13 11-page declaration from a supposed expert replete with factual assertions about  
14 matters outside the pleadings, improper opinions, argument, and legal conclusions.  
15 Putting aside the fact that Plaintiff’s supposed “expert” was never disclosed under  
16 Rule 26, and that he admits he never even read the entire *Cookie & Co.* work and  
17 never watched *CARS Toon* or *CARS 2*<sup>1</sup> the Hunter Declaration is patently improper  
18 and should be stricken.

19 **II. THE COURT SHOULD STRIKE ALL CITATIONS AND REFERENCES TO THE**  
20 **HUNTER DECLARATION THAT APPEAR IN PLAINTIFF’S OPPOSITION**

21 For the same reasons discussed above, courts also disregard any factual  
22 assertions contained in an opposition brief that go beyond the allegations of the  
23 complaint. *Schneider*, 151 F.3d at 1197, fn.1. Plaintiff’s Opposition contains 68  
24 citations and references to the Hunter Declaration. Large swaths of the Opposition  
25 are nothing but bare recitals of Dr. Hunter’s impermissible assertions. *See, e.g.*,  
26 Opp. at pp. 12-15, 19-23, and 27. Because the Opposition brief contains facts,

27  
28 <sup>1</sup> See Hunter Declaration, ¶¶ 7-10.

1 opinions and argument outside the pleadings, the Court should disregard and strike  
2 the portions that cite to, reference, incorporate, or rely on the Hunter Declaration.  
3 *Schneider*, 151 F.3d at 1197, fn.1; *Williston*, 524 F.3d at 1096.

4 **III. THE COURT SHOULD STRIKE PAGES 26 THROUGH 36 OF PLAINTIFF'S BRIEF**  
5 **BECAUSE THEY EXCEED THE ALLOWABLE PAGE LIMIT**

6 Central District Local Rule 11-6 unequivocally states that “[n]o memorandum  
7 of points and authorities . . . shall exceed 25 pages in length, excluding indices and  
8 exhibits, unless permitted by order of the judge.” Separately, this Court’s Standing  
9 Order states that opposition briefs “shall not exceed 25 pages” and that exceptions  
10 will only be made in “rare instances and for good cause.” Standing Order § 9.c. It is  
11 well within the Court’s discretion to enforce these clear rules by striking Plaintiff’s  
12 brief in its entirety, or at least those pages that exceed the page limits. *See Green v.*  
13 *California Court Apartments LLC*, 321 Fed. Appx. 589, 591 (9th Cir. 2009)  
14 (unpublished) (holding that district court did not abuse its discretion by striking  
15 motion that exceeded page limit under local rules); *see also Jackson*, 2010 WL  
16 4668311, at \*1 (court granted motion to strike 46-page opposition to motion to  
17 dismiss because it exceeded page limit set by Local Rule 11-6); *Fahmy v. Hogge*,  
18 No. CV 08-1152 PSG SHX, 2008 WL 4614322, at \*2 (C.D. Cal. Oct. 14, 2008)  
19 (holding “it is within the Court’s discretion to strike oversized briefs in their  
20 entirety” and refusing to consider pages of plaintiff’s brief that exceeded page limit  
21 set by Local Rule 11-6 and court’s Standing Order); *Broden v. Marin Humane Soc'y*,  
22 No. 97-0008 SBA, 1997 WL 818587, at \*3 (N.D. Cal. Nov.14, 1997), citing  
23 *Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 345 (9th Cir. 1996) (striking motion for  
24 summary judgment because motion exceeded the page limit imposed by Local  
25 Rules). Furthermore, as Judge Gutierrez explained in *Fahmy v. Hogge*, “ignorance  
26 is no excuse,” especially when a party is represented by counsel. 2008 WL  
27 4614322, at \*2. “The page limit on motions is not a complex technical procedural  
28

1 requirement. [The party] needed only to read the Court's Standing Order to learn of  
2 this simple rule." *Id.* (cites and quotes omitted).

3 Here, counsel did not seek leave to file an oversized brief from the Court, and  
4 did not raise this possibility with defense counsel, despite having ample time to do  
5 so. It would be fundamentally unfair for a party to violate the Local Rules and the  
6 Court's order without consequence. Accordingly, the Court should strike and  
7 disregard pages 26 through 36 of the Opposition.

8 **IV. CONCLUSION**

9 Because the Hunter Declaration is improper in the context of this motion for  
10 judgment on the pleadings, the Court should sustain Defendants' objections and  
11 strike the declaration in its entirety, as well as all references to, citations to and  
12 arguments based on it in the Opposition. The Court should also strike and disregard  
13 pages 26 to 36 of Plaintiff's Opposition brief.

14  
15 Date: July 18, 2011

HOGAN LOVELLS US LLP

16  
17 By: \_\_\_\_\_ /s/  
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19  
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